

HOUSE BILL No. 1323

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-21.

Synopsis: Use of credit information. Establishes certain restrictions on an insurer's use of credit information in the underwriting of personal property and casualty insurance.

Effective: July 1, 2003.

Porter

January 13, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1323

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 21. Use of Credit Information**

5 **Sec. 1. This chapter applies only to:**

- 6 (1) a personal insurance policy that is issued, delivered,
7 amended, or renewed after March 31, 2004; or
8 (2) the issuance or nonissuance of a personal insurance policy
9 after March 31, 2004.

10 **Sec. 2. As used in this chapter, "adverse action" means:**

- 11 (1) a denial or cancellation of;
12 (2) an increase in a charge for; or
13 (3) a reduction or other adverse or unfavorable change in the
14 terms of coverage or amount of;
15 insurance in connection with the underwriting of a personal
16 insurance policy.

17 **Sec. 3. As used in this chapter, "affiliate" means a company that**



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controls, is controlled by, or is under common control with another company.

Sec. 4. As used in this chapter, "applicant" means an individual who has applied to an insurer for coverage under a personal insurance policy.

Sec. 5. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

Sec. 6. As used in this chapter, "consumer" means an:

(1) insured whose:

(A) credit information is used; or

(B) insurance score is calculated;

in the underwriting or rating of a personal insurance policy;

or

(2) applicant for a personal insurance policy.

Sec. 7. As used in this chapter, "consumer reporting agency" means a person that, for a monetary fee, dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information concerning consumers to furnish consumer reports to third parties.

Sec. 8. As used in this chapter, "credit information" means credit related information that is:

(1) derived from a credit report;

(2) found on a credit report; or

(3) provided on an application for a personal insurance policy.

The term does not include information that is not credit related, regardless of whether the information is contained in a credit report or an application or is used to calculate an insurance score.

Sec. 9. As used in this chapter, "credit report" means a written or oral communication or another communication of information by a consumer reporting agency concerning a consumer's credit worthiness, credit standing, or credit capacity that is used or expected to be used or collected as a factor to determine personal insurance policy premiums, eligibility for coverage, or tier placement.

Sec. 10. As used in this chapter, "department" means the department of insurance created by IC 27-1-1-1.

Sec. 11. As used in this chapter, "insurance score" means a number or rating that is:

(1) derived from an algorithm, a computer application, a model, or another process;

(2) based on credit information; and

(3) created for the purpose of predicting the future insurance

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loss exposure of an individual consumer.

Sec. 12. As used in this chapter, "insured" means an individual entitled to coverage under a personal insurance policy.

Sec. 13. As used in this chapter, "insurer" means an insurer (as defined in IC 27-1-2-3) that issues a personal insurance policy.

Sec. 14. As used in this chapter, "personal insurance policy" means a policy that:

(1) provides one (1) or more of the kinds of insurance described in Class 2 or Class 3 of IC 27-1-5-1; and

(2) is underwritten on an individual basis for personal, family, or household use.

Sec. 15. This chapter does not apply to commercial insurance.

Sec. 16. An insurer that uses credit information to underwrite or rate risks shall not do the following:

(1) Use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel, or decline to renew a personal insurance policy solely on the basis of credit information.

(3) Base an insured's renewal rate for a personal insurance policy solely on credit information.

(4) Take an adverse action against a consumer solely because the consumer does not have a credit card account.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating a personal insurance policy, unless the insurer does one (1) of the following:

(A) Presents to the commissioner information that the absence or inability relates to the risk for the insurer and treats the consumer in a manner approved by the commissioner.

(B) Treats the consumer as if the consumer had neutral credit information as defined by the insurer.

(C) Excludes the use of credit information as a factor.

(6) Take an adverse action against a consumer based on credit information unless the insurer obtains and uses:

(A) a credit report issued; or

(B) an insurance score calculated;

not more than ninety (90) days after the date on which the personal insurance policy is first written or the renewal is issued.

(7) Use credit information unless the insurer recalculates the

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insurance score or obtains an updated credit report at least once every thirty-six (36) months. However, the following apply:

(A) At annual renewal, upon the request of an insured or the insured's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based on a current credit report or insurance score unless one (1) of the following applies:

(i) The insurer's treatment of the consumer is approved by the commissioner.

(ii) The insured is in the most favorably priced tier of the insurer, within a group of affiliated insurers.

(iii) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written.

(iv) The insurer reevaluates the insured at least once every thirty-six (36) months after a personal insurance policy is issued based on underwriting or rating factors other than credit information.

This clause does not require an insurer to recalculate an insurance score or obtain an updated credit report of a consumer more frequently than one (1) time in a twelve (12) month period.

(B) An insurer may obtain current credit information upon the renewal of a personal insurance policy when renewal occurs more frequently than every thirty-six (36) months if consistent with the insurer's underwriting guidelines.

(8) Use any of the following as a negative factor in an insurance scoring methodology or in reviewing credit information to underwrite or rate a personal insurance policy:

(A) A credit inquiry not initiated or requested by the consumer for the consumer's own credit information.

(B) An inquiry:

(i) relating to; and

(ii) identified on the consumer's credit report as an inquiry relating to;

insurance coverage.

(C) A collection account:

(i) with a medical industry code; and

(ii) identified on the consumer's credit report as a collection account with a medical industry code.

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(D) Multiple lender inquiries if the inquiries are:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry; and

(ii) made within thirty (30) days of one another; unless only one (1) inquiry is considered.

(E) Multiple lender inquiries if the inquiries are:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry; and

(ii) made within thirty (30) days of one another; unless only one (1) inquiry is considered.

Sec. 17. (a) If:

(1) a determination is made through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete; and

(2) the insurer receives notice of the determination from the consumer reporting agency or the insured;

the insurer shall re-underwrite and re-rate the personal insurance policy of the insured not more than thirty (30) days after receiving the notice.

(b) After an insurer re-underwrites or re-rates an insured as described in subsection (a), the insurer shall:

(1) make necessary adjustments consistent with the insurer's underwriting and rating guidelines; and

(2) if the insurer determines that the insured has overpaid premium, refund to the insured the amount of overpayment calculated back to the shorter of the:

(A) immediately preceding twelve (12) months of coverage; or

(B) actual policy period.

Sec. 18. (a) If an insurer uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time the insurance application is taken, that the insurer may obtain credit information in connection with the application. The disclosure must be:

(1) written; or

(2) provided to the consumer in the same medium as the application for insurance.

The insurer is not required to provide the disclosure statement

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1 required under this section to an insured on a renewal policy if the
2 insured has previously been provided a disclosure statement.

3 (b) Use of the following sample disclosure statement constitutes
4 compliance with this section: "In connection with this application
5 for insurance, we may review your credit report or obtain or use
6 a credit based insurance score based on the information contained
7 in that credit report. We may use a third party in connection with
8 the development of your insurance score."

9 Sec. 19. (a) If an insurer takes an adverse action based on credit
10 information, the insurer shall:

- 11 (1) provide notice to the consumer that an adverse action has
12 been taken, in accordance with the requirements of the
13 federal Fair Credit Reporting Act, 15 USC 1681m(a); and
14 (2) provide notice to the consumer explaining the reason for
15 the adverse action.

16 (b) The reason provided under subsection (a) must be provided
17 in sufficiently clear and specific language as to enable an individual
18 to identify the basis for the insurer's decision to take an adverse
19 action. The notice must include a description of not more than four
20 (4) factors that were the primary influences of the adverse action.
21 The use of generalized terms such as "poor credit history", "poor
22 credit rating", or "poor insurance score" does not meet the
23 requirements of this subsection. A standardized credit explanation
24 provided by a consumer reporting agency or other third party
25 vendor meets the requirements of this section.

26 Sec. 20. (a) An insurer that uses an insurance score to
27 underwrite and rate risks shall file the insurer's scoring models or
28 other scoring processes with the department.

29 (b) A third party may file a scoring model or scoring process on
30 behalf of an insurer.

31 (c) A filing that includes insurance scoring may include loss
32 experience justifying the use of credit information.

33 (d) A filing related to credit information is confidential.

34 Sec. 21. (a) An insurer shall indemnify and defend an insurance
35 producer and hold an insurance producer harmless from and
36 against liability, fees, and costs arising out of or related to the
37 actions, errors, or omissions of the insurance producer if the
38 insurance producer:

- 39 (1) obtains or uses credit information or insurance scores for
40 the insurer;
41 (2) follows the instructions of or procedures established by the
42 insurer; and

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1 (3) complies with applicable laws and regulations.

2 (b) This section does not provide a consumer with a cause of
3 action that does not exist in the absence of this section.

4 Sec. 22. (a) A consumer reporting agency may not provide or
5 sell data or lists that include information submitted in conjunction
6 with:

7 (1) an insurance inquiry about a consumer's credit
8 information; or

9 (2) a request for a credit report or insurance score;
10 including the expiration dates of an insurance policy or other
11 information that may identify periods during which a consumer's
12 insurance expires and the terms and conditions of the consumer's
13 insurance coverage.

14 (b) The restrictions imposed by subsection (a) do not apply to
15 data or lists that a consumer reporting agency supplies to an:

16 (1) insurance producer from whom the information was
17 received;

18 (2) insurer on behalf of which the insurance producer
19 described in subdivision (1) acted; or

20 (3) affiliate or holding company of the insurer described in
21 subdivision (2).

22 (c) This section does not prohibit an insurer from obtaining a
23 claim history report or a motor vehicle report.

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